

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYMOND GEBAUER,

Defendant.

Case No. CR06-0122RSL

ORDER DENYING APPEAL OF
CLERK'S ORDER DENYING *PRO*
HAC VICE APPLICATION

I. INTRODUCTION

This matter comes before the Court on the "Appeal to District Court of Clerk's Order Denying Defendant's Choice of Counsel." (Dkt. #31). By letter dated December 4, 2006, the Clerk of the Court denied the application of Oscar Stilley to appear *pro hac vice* to represent defendant in this case. Although the Local Rules do not provide for an appeal, the Court will permit Stilley to appeal the denial to this Court. On January 12, 2007, the government filed a response opposing Stilley's appeal and application.

II. DISCUSSION

As an initial matter, Stilley has requested an adversary hearing regarding his application. Notably, he provided the disciplinary materials that are the primary basis for the Clerk's and this Court's decisions. He has not shown a need for live testimony to address the documents, and

1 there is no dispute regarding the authenticity of the relevant documents. Because the Court can
2 decide this matter based on the written materials, Stilley's request for a hearing is denied.

3 In considering the application and the appeal, this Court recognizes that the denial of a
4 criminal defendant's right to the counsel of his choice raises Sixth Amendment concerns. See,
5 e.g., United States v. Walters, 309 F.3d 589, 592 (9th Cir. 2002). The right, however, may be
6 abridged to serve some "compelling purpose." Id. (internal citation and quotation omitted). "A
7 criminal defendant's exercise of this right cannot unduly hinder the fair, efficient and orderly
8 administration of justice." Id. (internal citation and quotation omitted). An application may be
9 denied if defendant's "'choice of counsel . . . would unreasonably delay proceedings or burden
10 the court with counsel who was incompetent or unwilling to abide by court rules and ethical
11 guidelines.'" Id. (quoting United States v. Panzardi Alvarez, 816 F.2d 813, 817-18 (1st Cir.
12 1987)). Based on the relevant authority, the Court has weighed defendant's right to counsel of
13 his choice against factors weighing against admitting Stilley to practice *pro hac vice*.

14 Stilley argues that he "is licensed and in good standing" in other jurisdictions. Appeal
15 Memorandum at p. 2. Although this Court has considered that fact, it is not dispositive, just as it
16 is not dispositive that several other jurisdictions have refused to admit Stilley to practice *pro hac*
17 *vice*.

18 Stilley has been disciplined several times by the Arkansas Supreme Court Committee on
19 Professional Conduct (the "Committee"). The Committee suspended Stilley for 30 days
20 effective October 1, 2001. The Committee also cautioned him on October 17, 2001;
21 reprimanded him twice, on October 17, 2001 and November 13, 2001; and issued a letter of
22 warning on July 20, 2001. Stilley also stated in his application, "Another professional conduct
23 matter is pending." He has not further identified the matter, citing a right to maintain
24 confidentiality. The Court is troubled both by the significant number of prior disciplinary
25 actions and by the fact that Stilley's pattern of professional conduct matters is continuing.

26 In addition to Stilley's extensive and on-going list of disciplinary matters, he has been
27 fined and sanctioned by numerous courts. See, e.g., Stilley v. Marschewski, 2006 U.S. App.

1 LEXIS 13316 (8th Cir. 2006) (unpublished) (affirming imposition of Rule 11 sanctions), *cert.*
2 *denied* 2007 U.S. LEXIS 66 (Jan. 8, 2007); Stilley v. James, 48 Fed. Appx. 595, 597 (8th Cir.
3 2002) (unpublished per curiam) (finding no abuse of discretion in imposing Rule 11 sanction
4 enjoining Stilley from filing future cases involving issues that had been litigated or raised in
5 three lawsuits and two appeals; finding that the court “acted appropriately by helping Stilley stop
6 pursuing fruitless litigation”). As set forth in James and in Stilley v. Hubbs, 344 S.W.3d 209,
7 213 (Ark. 2001), Stilley has shown a pattern of continuing to pursue litigation after the relevant
8 issues have already been decided, resulting in the imposition of sanctions and waste of judicial
9 resources. Similarly, in this case, his appeal of the Clerk of the Court’s decision is mostly
10 comprised of challenges to the Committee’s disciplinary decisions. As the government noted in
11 its response to the appeal, this is not an appropriate forum to challenge the Committee’s
12 decisions. Stilley’s attempts to do so demonstrate his proclivity to reargue issues that have
13 already been finally decided.

14 This Court is also troubled by Stilley’s apparent lack of respect for the courts, its officers,
15 and its rules. Stilley was reprimanded for, among other things, making a false statement of
16 material fact to the tribunal. Ex. 3. Three of his disciplinary actions have included a finding
17 that he violated the ethical rules by engaging in conduct that is prejudicial to the administration
18 of justice. Exs. 1, 2, 4. Stilley refused to pay the sanctions imposed in one case, and in defiance
19 of the court’s order, failed to submit financial documents to support his professed inability to
20 pay, ultimately resulting in his incarceration. Stilley v. Forth Smith Sch. Dist., 2006 Ark. LEXIS
21 430 (Sept. 14, 2006). Notably, his appeal memorandum in this case does not comply with this
22 Court’s Local Rules. In violation of Local Rule 10, it does not include pleading line numbers or
23 a bottom notation with the pleading title, case number, and attorney contact information. An
24 attorney seeking to practice before this Court must be familiar with and comply with all Court
25 rules.

26 Also, Stilley’s pattern of improper conduct could, if repeated in this case, present grounds
27 for a claim of ineffective assistance of counsel, which would be detrimental to the administration

1 of justice. For example, Stilley was suspended for filing an appeal against the wishes of his
2 client, failing to abide by his wishes, proceeding despite a conflict of interest, and engaging in
3 conduct that was both prejudicial to the administration of justice and involved dishonesty, fraud,
4 deceit or misrepresentation. He was cautioned for violating the ethical rules requiring that a
5 lawyer act with reasonable diligence and promptness in representing a client and for filing a
6 petition for rehearing that was argumentative and devoid of any legal or factual basis for
7 reversing a previous court decision.

8 Having reviewed the extensive instances of discipline and sanctions, Stilley's violations
9 of the ethical rules, and the instances of disrespect towards the courts and their rules and orders,
10 the Court finds that permitting him to represent defendant would burden the court with counsel
11 who is unwilling to abide by court rules, orders, and ethical guidelines. Those factors, as well as
12 his continued pursuit of litigation after the issues have already been finally resolved, suggest that
13 allowing Stilley to represent the defendant in this case would delay the proceedings and unduly
14 hinder the fair, efficient and orderly administration of justice.

15 III. CONCLUSION

16 For all of the foregoing reasons, the Court DENIES Stilley's appeal and DENIES his
17 application to appear *pro hac vice* in this case.

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19 DATED this 17th day of January, 2007.

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23 Robert S. Lasnik
24 United States District Judge
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